UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,651	12/21/2001	Gilles Rubinstenn	05725.1012-00	2641

7590 11/25/2003

FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER	
PASS, BARRY	

ART UNIT	PAPER NUMBER
3737	8

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/024,651	RUBINSTENN, GILLES	
	Examiner	Art Unit	
	Barry Pass	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-10, 21-24, 27-30, 41-43 and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott US 4,434,467. Scott discloses a system and method for beauty analysis whereby the head of a subject is placed adjacent to a display device; control signals are sent to a display device; the display device includes a means for producing predetermined illumination of the subjects face (inherent to a vision-based system is an illumination source that produces electromagnetic radiation in the visible range, which includes red); an image of the subject's face is displayed; the image is processed to derive information about hair color; stored images are compared; the system uses a computer programmed to provide instructions to effect desired change in hair color.

3. Claims 1-6, 8,10-26, 28, 30-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Flohr US 5,612,733. Flohr discloses (abstract, columns 1-2, Figs. 9, 10 a, b) a system and method of capturing and displaying an image of a subjects face, head and torso whereby the head of a subject is placed adjacent to a display device; position of the body part is optimized; control signals are sent to a display device (inherent to the scanning process that produces the picture is the production of pulses or flashes of electromagnetic (EM) radiation); EM radiation of predetermined wavelength (including wavelengths corresponding to red) illuminates the

subject's face; a captured image of the subject's face is displayed; the image is processed to derive information; compensation is made for illumination sources to optimally reproduce skin tones in the displayed image (calibration); clients and servers with associated algorithms are utilized and instructions are transmitted over a network (columns 3-4, Fig. 11); processing of the image by comparison to images stored in a database; optimizing image position in the display with a tracking system (column 6).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flohr in view of Fay US 5,983,201. Flohr teaches a method of capturing and processing an image of a body part as recited above in the rejection of claim 1. Flohr does not teach using information from the image capture and display system for prescribing a beauty product. Fay discloses a system and method for remote electronic shopping for beauty products interactively determined to be best suited for an individual. Fay discloses (abstract, columns 1-4) a database of facial images of an individual downloadable to that individual's personal computer where images are constructed showing how the individual will look with the proposed beauty product. It would have been obvious to someone of ordinary skill in the art at the time of the invention that the method of capturing and processing an image of a body part as taught by Flohr can be used to provide

accurate, color-corrected images suitable for customizing the selection of a beauty product as disclosed by Fay.

6. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flohr in view of Fay. Flohr discloses a system for capturing and processing an image of a body part as recited above in the rejection of claim 21. Flohr does not teach a system for using information from the image capture and display system to prescribe a beauty product. Fay discloses a system and method for remote electronic shopping for beauty products interactively determined to be best suited for an individual. Fay discloses (abstract, columns 1-4) a database of facial images of an individual downloadable to that individual's personal computer where images are constructed showing how the individual will look with the proposed beauty product. It would have been obvious to someone of ordinary skill in the art at the time of the invention that the system for capturing and processing an image of a body part as taught by Flohr can be used to provide accurate, color-corrected images suitable for customizing the selection of a beauty product as disclosed by Fay.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flohr in view of Fay, further in view of Utsugi US 6,502,583 further in view of Lin US 6,108,437. Flohr discloses a method of capturing and processing an image of a body part as recited above in the rejection of claim 1. Flohr does not teach using information from the image capture and display system for prescribing a beauty product. Fay discloses a system and method for remote electronic shopping for beauty products interactively determined to be best suited for an individual. It would have been obvious to someone of ordinary skill in the art at the time of the invention that the system

and method of capturing and processing an image of a body part as taught by Flohr can enhance the system and method of customizing the selection of a beauty product as disclosed by Fay.

Fay and Flohr do not teach processing captured images of a body part using artificial intelligence. Utsugi teaches (abstract, column 7) a system and method for makeup simulation using image processing but does not teach image processing using artificial intelligence. Lin teaches (abstract, column 6, lines 48-60) the system and method well known in the art of manipulating facial images using artificial intelligence. Accordingly, it would have been obvious to someone of ordinary skill to use image processing with artificial intelligence to analyze facial features and display hypothetical changes brought on by a cosmetic process in a system and method of capturing and processing an image of a body part to customize and enhance the selection of a beauty product as taught by Flohr and Fay.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flohr in view of Fay, further in view of Utsugi further in view of Lin. Flohr discloses a system for capturing and processing an image of a body part as recited above in the rejection of claim 21. Flohr does not teach a system for using information from the image capture and display system for prescribing a beauty product. Fay discloses a system and method for remote electronic shopping for beauty products interactively determined to be best suited for an individual. It would have been obvious to someone of ordinary skill in the art at the time of the invention that the system and method of capturing and processing an image of a body part as taught by Flohr can enhance the system and method of customizing the selection of a beauty product as disclosed by Fay.

Fay and Flohr do not teach a system for processing captured images of a body part using artificial intelligence. Utsugi teaches (abstract, column 7) a system and method for makeup

simulation using image processing but does not teach image processing using artificial intelligence. Lin teaches (abstract, column 6, lines 48-60) the system and method well known in the art of manipulating facial images using artificial intelligence. Accordingly, it would have been obvious to someone of ordinary skill to use a system for image processing with artificial intelligence to analyze facial features and display hypothetical changes brought on by a cosmetic process in a system for capturing and processing an image of a body part to customize and enhance the selection of a beauty product as taught by Flohr and Fay.

9. Claims 51- 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasuda in view of Skincheck™ (Omnicontrols, September 2000). Yasuda US 6,034,698 teaches a hairdo selection system and method in which a subject is precisely positioned in an electronic apparatus that captures an image of the subject and synthesizes images of the subject with previous stored hairdo patterns to enable a personalized beauty-enhancing recommendation. Yasuda does not teach a beauty analysis system with a pH indicator. Skin-care kits including pH indicators, such as taught by Skincheck™, are well known in the art and inclusion of such a tool in a beauty kit is a matter of design choice. Regarding claim 54, the use of software drivers for monitors is well known in the art.

Response to Arguments

10. Applicant's arguments filed September 4, 2003 have been fully considered but they are not persuasive.

Regarding the rejection of claims 1-4, 7-10, 21-24, 27-30, 41-43 and 46-48 under 35 U.S.C. 102(b) as being anticipated by Scott, the illumination means of Scott is part of the display device of Scott which comprises a display screen or monitor, illumination device and projection means.

Regarding the rejection of claims 1-6, 8,10-26, 28, 30-50 under 35 U.S.C. 102(b) as being anticipated by Flohr, and the rejection of Claims 7, 9, 27 and 29 under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Flohr and, in regard to claims 7 and 27 further in view of Utsugi further in view of Lin, the display device of Flohr comprises a display screen or monitor, additional sources of illumination and a camera device, with the monitor generating light which contributes to illumination of the face of the subject, and that light is accounted for when calibrating the displayed image to produce skin tones accurately. Further, signals are sent to the display device of Flohr to activate it.

Regarding the rejection of claims 51- 53 under 35 U.S.C. 103(a) as being unpatentable over Yasuda in view of Skincheck™, the prior art cited includes all the elements of the system claimed in the present invention and can perform the intended function of the invention.

Applicant states in the specification "The package also may (or may not) include an evaluation tool for analyzing an external body condition. The evaluation tool may include at least one of a pH indicator,..." Applicant thus has not disclosed that using a pH indicator in combination with the image capture system and method of the invention provides an advantage, is used for a particular purpose, or solves a stated problem. Further, Applicant in Remarks of the

amendment filed September 4, 2003 states on page 19 "it is unclear why a skilled artisan would be inclined to include pH indicators with the [hairdo selection] system of Yasuda." A similar lack of a demonstration of criticality is demonstrated by the instant invention. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with or without a pH indicator.

Therefore, it would have been an obvious matter of design choice to modify the system of Yasuda to provide a means of testing for pH as taught by Skincheck™ to obtain the invention as specified in the claims.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Pass whose telephone number is (703) 305-0726. The examiner can normally be reached on Monday-Friday, 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703) 308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-8382.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.

Barry Pass

November 10, 2003

DENNIS W. RUHL
SUPERVISORY PATENT EXAMINER